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Ballot-measure description disputed

Proposal would boost sales tax to help fund roads, transit projects

by **Howard Fischer** - Jul. 24, 2008 12:00 AM
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A business-backed coalition seeking to persuade voters to pass a state sales-tax hike for roads and mass-transit projects is asking a judge to void the description slated to appear on the ballot.

Attorneys for the TIME Coalition want Maricopa County Superior Court Judge Edward Burke to bar the Legislative Council from telling voters that the levy is "a 17.8 percent tax increase" because it is "misleading," said Paul Eckstein, one of the lawyers.

But even Stan Barnes, a lobbyist for the tax hike, conceded that the number is accurate.

Burke scheduled a hearing for Aug. 1.

Central to the debate is how Arizona voters perceive the issue when they vote Nov. 4.

The actual language of every ballot measure is sent to the home of each registered voter. But given the complexity of many of the proposals - this one alone is 15 pages - state law requires the Legislative Council, made up of lawmakers from both parties, to craft "an impartial analysis" of each one.

In this case, the majority of council members approved a description of this initiative, dubbed "Transportation and Infrastructure Moving Arizona's Economy," as an increase of the state sales tax from 5.6 cents on every dollar to 6.6 cents beginning in 2010. And the panel then directed that the size of the hike, 17.8 percent, be inserted parenthetically into the description.

The measure also would hike the mining severance tax from 2.5 cents on the dollar to 3.5 cents, a 40 percent hike.

Backers hope to raise \$42.6 million over 30 years with the additional taxes.

Eckstein said numbers showing the percentage increase, while accurate, are misleading and "calculated to cause voters to vote against the TIME Act."

But Mike Braun, staff director of the Legislative Council, said there's nothing misleading or illegal about it. And Braun noted that the calculation of the size of the tax hike is, in fact, mathematically correct.

But Eckstein called that legally irrelevant.

"It's well known in a variety of fields of law that information can be accurate but not be impartial," he said, noting that's the case with laws on libel.

"Our contention is the putting of percentages in parentheses not only can be confusing because people think there's a 17.8 percent increase in the total tax, but it is also designed, in our belief, to cause people to vote against it," Eckstein said.

He would prefer the ballot explanation describe the change in the levy the way backers crafted it: a 1 percentage point increase.

Eckstein said, though, he doesn't intend to present any witnesses who would testify that the 17.8 percent figure confuses them.

That percentage figure isn't the only problem road-tax supporters have. They are not happy that the first sentence of the ballot analysis explains only about the tax. They are unhappy that the ballot analysis first explains the tax and then informs voters that the monies raised would be used for the state transportation system, including interstate highway improvement projects, mass transit, intercity rail, and preservation of open space and wildlife habitats.

Eckstein said that is illegal because it "disproportionately focuses on the tax increases over the infrastructure improvements."

Braun said turning the explanation around the way road-tax backers want would not be fair.

"The Legislative Council has traditionally described new tax programs by first describing where the revenue will come from and then where it will be used," he said.

Reports on file with the Secretary of State's Office show that so far backers of the tax hike have collected about \$900,000 for the campaign. Much of that comes from construction firms who could benefit if they get contracts for new roads or expanded light-rail projects.

Opposition to the measure already is forming on opposite fronts.

The Sierra Club is unhappy that only 18 percent of the money raised from the new levy would go to things like more buses and light rail. Jim Vaaler, who chairs the organization's Grand Canyon chapter, said the group is particularly interested in a proposed Tucson-to-Phoenix passenger rail service.

And the Arizona Federation of Taxpayers is complaining that the plan actually spends too much on what Chairman Tom Jenney calls "highly expensive and ineffective transit projects such as light rail."